

## **STATEMENT OF CONSIDERATIONS**

### **Nanoscale Science Research Center Class Waiver, W(C)-2005-001**

The 21st Century Nanotechnology Research and Development Act, 15 U.S.C. § 7501 *et seq.*, (the “Nanotechnology Act”), signed into law on December 3, 2003, codifies programs and activities supported by the National Nanotechnology Initiative (NNI) and provides for the establishment of a network of advanced technology user facilities and centers. An “advanced technology user facility” is defined as “a nanotechnology research development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.” 15 U.S.C. § 7509(5). DOE has established five user facilities under the Nanotechnology Act, known as Nanoscale Science Research Centers (NSRCs), which are funded by the Office of Basic Energy Sciences and housed at various contractor-operated National Laboratories.

In 1991, DOE issued a class waiver for proprietary users of designated user facilities. Under that waiver, limited to use of equipment, users fully fund their own experiments and own all of the resulting inventions and data, with no Government license or march-in rights in the inventions, and no obligations to publish the resulting data. That proprietary user arrangement may be made available to users of the NSRCs at the discretion of the NSRCs where no collaboration with the Laboratory scientists is contemplated.

Entities that are coming to NSRCs, who are not subject to a pre-existing agreement with the Government, will be using the facilities either to advance a specific commercial interest, to gain a familiarity with the capabilities of the NSRC, or to advance their own general state of knowledge. To achieve these objectives, these parties may want to engage in collaboration with the Laboratory scientists at the NSRCs.

While such collaborative uses of the NSRCs could be covered under the statutory authority for Cooperative Research and Development Agreements (CRADAs) in 15 U.S.C. § 3710a, that authority does not exclude other contractual arrangements for collaborative research. Both before and after the enactment of the CRADA law, DOE authorized other types of agreements that covered work that also could have been performed under CRADAs. These include Non-proprietary and Proprietary User Facility Agreements and the Deployment User Facility Agreement. In order to maximize access and utilization of the NSRCs as envisioned by the authorizing legislation, there is a need to have a streamlined approach to permit users the flexibility to engage in a general collaboration without having to negotiate a formal CRADA, which can cause significant delays. Use of CRADAs for all collaborative work may also limit access to and use of the NSRCs. Laboratories might be reluctant to enter into CRADAs with some parties insofar as the Laboratories would be obligated to negotiate exclusive licenses in Laboratory inventions for certain fields of use. Such exclusive licenses, to the extent they

